IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPEALLTE JURISDICTION.

CRIMINAL APPEAL NO. 421 OF 1998

Ananda Tukaram More ....Appellant.
(Orig.Accd.)

V/s

The State of Maharashtra .... Respondents.

Mr.S.B. Shetye, Adv. for the appellant.

Mrs.P.H. Kantharia, APP for the State.

CORAM: V.G. PALSHIKAR
AND
R.C. CHAVAN, JJ.

14th July, 2005.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Kolhapur in Sessions Case No.86 of 1995 on 24.3.1998 the appellant-accused has preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. With the assistance of the learned Advocate for the appellants as also the

learned Public Prosecutor we have scrutinized the entire evidence on and reappreciated the same.

3. The prosecution case is that the accused and the victim were married. Their relations were strained. Several attempts were made to resolve the disputes but no end. On 12.7.1994 at about 12.15 it was reported to the police that wife met accidental death by the accused but in the night around 10.00 p.m. The father of the victim lodged a complaint alleging the murder by the husband and therefore crime No.64 of 1994 was registered by Shirol police station, Kolhapur. Accused was arrested, investigation was conducted. The prosecution examined 11 witnesses to prove its case and the learned trial Judge as aforesaid convicted the accused under section 302 of Indian Penal Code. It is however pertinent to note that the learned trial Judge while so convicting the accused under section 302 IPC acquitted the accused on both the offences punishable under sections 498A and 201 of IPC. The findings of the learned trial Judge being final have been subjected to under challenge. The first question therefore arises is what was the motive for the accused to commit the crime. Offence under section 498A is held not proved, disappearance of evidence of crime held not proved. Consequently there is no motive which can be attributed to the accused for committing the crime. It is pertinent to note that the accused has immediately lodged a complaint of accident.

4. The entire evidence on record is circumstantial. There are circumstances on record which go to show that the accused himself called the doctor when the wife was injured. Such conduct on the part of the accused therefore militates against the fact that he himself has committed the crime. P.W.7-Dr.Suman Patil is the doctor who examined the victim and who conducted the post mortem. She has categorically stated in her deposition that the injuries sustained by the victim could be caused by fall on hard object. The entire evidence of the prosecution in so far as it relates to section 498A of IPC is rejected by the learned trial Judge. What remains is the evidence which shows that the victim sustained injuries and those injuries could be caused by fall or those injuries could be caused by the accused. In the ultimate analysis the question is whether the accused pushed the victim to death or the victim fell to death. The version that she fell to death is the plea of defence and it is in face of evidence of P.W.7-Doctor consistent with with that theory of the defence that the victim fell while cooking. This story of the defence is further fortified by the conduct of the accused himself. Immediately after the victim fell he has gone to doctor called the doctor to check wife's injuries. In such circumstances in the absence of any motive and the prosecution evidence being explained consistent with the claim of the defence conviction is not possible nor permissible in law. In the result therefore the appeal succeeds and is allowed. The appellant-accused is already on bail. His bail bond stands canceled.